

REMARKS

This responds to the Office Action dated June 16, 2006, and the references cited therewith.

No claims are amended, no claims are canceled, and no claims are added; as a result, claims 1-18, 25-30 and 47-59 remain pending in this application.

§103 Rejection of the Claims

Claims 1-18, 25-30 and 47-59 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Abdulkader (U.S. Patent Publication No. 2002/012838) in view of class subclass definition 607/31, or in view of Batty, Jr. (U.S. Patent No. 4,613,937).

Applicant respectfully traverses the rejection and submits that *prima facie* obviousness has not been established. In particular, the Office Action refers to a proposed combination of Abdulkader and class subclass definition 607/31 and indicates that class subclass definition 607/31 is attached. Applicant, however notes that a definition does not appear to have been included with the correspondence received from the Office. Accordingly, Applicant relies on the definition found at the US PTO website for class subclass 607/31.

The proposed combination of Abdulkader and class subclass definition 607/31 does not appear to disclose, suggest or teach all elements recited in the claims. For example, Applicant is unable to find, in the proposed combination, a disclosure, suggestion or teaching of a memory coupled to the receiver and configured to store a key and the message, and a hash value generator coupled to the memory and configured to generate a second hash value as a function of the key and the message, as recited in claim 1. The discussions found at paragraph 6 and paragraph 23 of Abdulkader do not appear to disclose, suggest or teach the use of a key in the manner recited. Indeed, Abdulkader refers to a “resultant value [that] is . . . encrypted using an encryption key” whereas the subject matter recited in the claim uses the key in a wholly different manner.

In addition, Applicant is unable to find, in the proposed combination, an implantable device, as referenced in independent claims 1, 10, 14, 25, and 47. Indeed, Applicant finds no mention of an implantable device in either Abdulkader or in subclass definition 607/31 as well as subclasses 30, 9, 2, and 1 from which subclass 31 is indented.

Furthermore, the record does not appear to set forth grounds for selecting and combining the cited documents in the manner proposed. In describing the proposed combination, the Office Action states that it “would have been obvious since there is a whole subclass for implantable device [*sic*] requiring such features and Abdulkader teaches a new method for secure communication.” Applicant submits that such reasoning does not satisfy the requirement for setting forth cogent grounds for selecting and combining in the manner proposed. Indeed, the Office Action assertion appears contrary to M.P.E.P. § 2143.01 which provides that the fact that the claimed invention is within the capabilities of one of ordinary skill in the art is not sufficient by itself to establish *prima facie* obviousness.

The Office Action refers to an alternative proposed combination including Abdulkader and Batty. In describing the alternative proposed combination, the Office Action sets forth the conclusory statement that “to have used the Abdulkader methods in the Batty device would have been obvious.” Applicant submits that such reasoning does not satisfy the requirement for setting forth cogent reasoning and factual findings to support the proposed combination.

The alternative proposed combination appears to be improper since Abdulkader and Batty each discuss different principles of operation and that to combine as proposed entails substantial reconstruction and redesign. The Batty Abstract states that “the computer is inhibited from storing the preprogramming signals unless both the first access signal and the second access signal have been received in sequence.” In contrast, the Abdulkader Abstract refers to “each packet now contains the information needed to generate the correct unique decryption key by the intended receiver and every packet effectively resynchronizes the encryption functions.” To combine as proposed appears to entail a change in the principle of operation of at least one of the cited documents.

Furthermore, the Office Action does not appear to set forth on the record, a cogent reason for selecting Abdulkader for combining with Batty in the manner proposed. If Batty alone achieves that which is purported, then from the record, it appears the only reason to pursue the combination is because “Abdulkader teaches a new method” (as asserted in the Office Action). Without more, such reasoning does not support the proposed combination.

As to dependent claims, 1-9, 11-13, 15-18, 26-30 and 48-59, Applicant submits that each recites additional elements beyond that of the corresponding base claims from which each

depends. It is believed that the independent claims are in condition for allowance, and therefore, so to are each of the dependent claims.

For at least these reasons, it appears that *prima facie* obviousness has not been established. Applicant respectfully requests reconsideration and allowance of the pending claims.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6911 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

SCOTT J. HEALY ET AL.

By their Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.

P.O. Box 2938

Minneapolis, MN 55402

(612) 373-6911

Date

September 18, 2006

By



David W. Black

Reg. No. 42,331

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 18 day of September 2006.

Name

John D. Gustafson - Wrathall

Signature

